IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.4873 OF 2005

Arun Shripati Bhalerao & Anr. ...Applicants
Vs.
The State of Maharashtra ...Respondent

Ms Smita Kadu-Gawai for the Applicants.
Ms Rajshree Gadhvi, A.P.P. for the Respondent.

CORAM : A.S.OKA, J.
DATED : AUGUST 02, 2005.

P.C.:

1. Heard Advocate for the Applicants and learned A.P.P. for the State. Application made by the Applicants before the Sessions Court for grant of Anticipatory Bail has been rejected only on the ground that the Applicants remained absent on 28th June, 2005 when the said Application was fixed for hearing before the learned Additional Sessions Judge. Pending the Application made before the Sessions Court, interim Anticipatory Bail was granted in favour of the Applicants.

2. The learned Advocate for the Applicants submitted that on the day on which the Application was fixed for hearing before the learned Additional Sessions Judge, the Applicant No.2 had sent a fax message to his Advocate pointing out the reasons for which the Applicants were not in a position to attend the Court. The said fax message was produced by the learned Advocate for the Applicants before the Sessions Court. The learned Advocate for the Applicants submitted that it is very clear from the

said fax message that absence of the Applicants was not deliberate and was due to the reasons beyond the control of the Applicants. The learned Advocate for the Applicants stated that the Applicants are present personally in this Court. The Applicants through their Advocate undertake to this Court to remain present before the Sessions Court on the date fixed by this Court. The learned Advocate for the Applicants submitted that an opportunity be given to the Applicants to prosecute the Application made by the Applicants before the Sessions Court on merits. The learned A.P.P. submits that the learned Judge was right in rejecting the Application.

3. I have considered the submissions. The Applicants informed their Advocate by sending a fax message regarding their inability to attend the court on the date of hearing. In view of this fact and in view of the solemn undertaking given by the Applicants, interest of justice requires that the Applicants should be permitted to prosecute the Application made by them before the Sessions Court on merits.

4. Hence, I pass the following order:

: O R D E R :

i) The impugned judgment and order dated 28th June, 2005 passed by the Vth Additional Sessions Judge, Pune holding the charge of the post of IVth Additional Sessions Judge, Pune is set aside and the learned Judge is directed to decide the Criminal Bail Application No. 1004 of 2005 afresh in accordance with law.

ii) Undertaking given by the Applicants through their Advocate is accepted. The Applicants are directed to remain present before the concerned Sessions Court on Monday 08th August, 2005 at 11.00 a.m. If the Applicants do not remain present on the next date i.e. 08th August, 2005, the learned Additional Sessions Judge will be free to dismiss the Application only on the ground of absence of the Applicants.

iii) If the Applicants remain present on 08th August, 2005 as directed by this Court before the Sessions Court, interim protection earlier granted by the Sessions Court will continue to operate till the disposal of the Application. In such event, the learned Additional Sessions Judge will hear and decide the Miscellenous Criminal Application No.1004 of 2005 in accordance with law as expeditously as possible.

iv) In view of undertaking given by the

Applicants, till 08th August, 2005 the Applicants shall not be arrested in connection with C.R.No.226 of 2005 of Yerwada Police Station, subject to condition of the Applicants reporting to the concerned Police Station every day at 05.00 p.m. and subject to condition of co-operating with the Investigating Officer.

v) Application is disposed of in above terms.

vi) Parties and concerned court to act upon an authenticated copy of this order.

JUDGE